IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.569 OF 1998

Maharashtra Hybrid Seeds Ltd. ...Petitioners

Versus

Octopussy Exports Limited ...Respondents

.....

Mr.Leon Samuel i/b M/s.Kanga & Co.for Petitioners.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 7, 2005.

P.C.

1. Heard Counsel for the Petitioners. None appears for the Respondents though served. No reply has been filed inspite of service.

2. This Petition is filed under Sections 433 & 434 of the Companies Act, 1956, praying for winding up of Respondent Company M/s.Octopussy Exports Limited. As per the terms of Agreement reached between the parties, the Petitioners decided to extend financial facility to the

Respondent Company upto an aggregate limit of Rs.2,00,00,000/- (Rupees Two Crores). As per the said agreement, Petitioners provided finance in the sum of Rs.1,12,40,000/- (Rupees One Crore Twelve Lakhs Forty Thousand). Out of the said amount, the Respondent Company has repaid only Rs.10,00,000/- (Rupees Ten Lakhs). The fact that the amount has been made over to the Respondent Company is substantiated from the documents on record, in particular, the promissory note of the Managing Director of the Respondent Company dated 28th June 1996 for a sum of Rs.1,03,76,740/- (Rupees One Crore Three Lakhs Seventy-six Thousand Seven Hundred Forty) being principal amount and liability to pay interest at the rate of 24% per annum from the date of receipt of the principal amount i.e. 27th February 1996 to the Petitioner Company.

3. As the outstanding amount of over Rupees One Crore was not returned by the Respondent Company inspite of repeated reminders, the Petitioners eventually gave statutory notice on 4th February 1998. No response was given to the statutory notice, nor any payment offered on behalf

of the Respondents. Eventually, Petitioners filed present Petition seeking relief as referred to above.

4. Inspite of service of the present Petition, no reply has been placed on record on behalf of the Respondent Company. In that sense, the averments made in the Company Petition and the assertions in the statutory notice have remained uncontroverted. As the legal presumption arising that the Respondent Company is unable to pay its debt, remains unrebutted, this Court has no option but to hold that the Respondent Company is unable to pay its debt.

5. In the circumstances, Petition made absolute in terms of prayer clauses (a) and (b).

6. The Official Liquidator to take possession of the assets and properties of the Respondent Company forthwith and proceed in accordance with law.

A.M.KHANWILKAR, J.